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MAK DATA PRIVATE LIMITED

v.

COMMISSIONER OF INCOME TAX-II

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SUPREME COURT, INDIA
(2014) 1 SUPREME COURT CASES 674
KSP RADHAKRISHNAN J
AK SIKRI J
[CIVIL APPEAL NO: 9772 OF 2013†]

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30 OCTOBER 2013

REVENUE LAW: *Income Tax - Penalty - Concealment of income - Imposition of penalty, confirmed - Appellant assessee filed return of income declaring income along with tax audit report - Certain documents*

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comprising share application forms, bank statements, memorandums of association of companies, affidavits, copies of income tax returns and assessment orders and blank share transfer deeds impounded in course of survey proceedings under S. 133-A of IT Act in a sister concern of assessee - In reply to showcause notice assessee offering to surrender Rs

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40.74 lakhs to avoid litigation and buy peace and amicable settlement of dispute, purportedly by way of voluntary disclosure without admitting any concealment whatsoever or with any intention to conceal and subject to non-initiation of penalty proceedings and prosecution - Held, IT Act does not recognise such types of defences under Expln. 1 to S. 271(1)(c) of

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Income Tax Act - The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he may be absolved from penalty - Further, held, principles laid down by Supreme Court, have been correctly followed by Revenue and there is no illegality in Department initiating penalty proceedings in instant case - Imposition of penalty of

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about Rs 14.62 lakhs under S. 271(1)(c) of the IT Act, confirmed - Income Tax Act, 1961, Ss. 271, 274, 133-A, 143 and 142

REVENUE LAW: *Income Tax Act, 1961 - S. 271(1)(c) and Expln. 1 - Concealment of income - Presumption raised by Expln. 1 - Reversal of onus of proof - Held, S. 271(1) Expln. 1 raises presumption*

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of concealment, when a difference is noticed by AO, between reported and assessed income - Burden is on assessee to show otherwise, by cogent and reliable evidence - When initial onus placed by Expln. 1, has been

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† Arising out of SLP (C) No. 18389 of 2013. From the Judgment and Order dated 22-1-2013 of the High Court of Delhi at New Delhi in ITA No. 415 of 2012

discharged by assessee, onus shifts onto Revenue to show that amount in question constituted income and not otherwise - AO has to satisfy itself whether penalty proceedings be initiated or not during course of assessment proceedings and AO is not required to record his satisfaction in a particular manner or reduce it into writing

Held:

The assessing officer shall not be carried away by pleas of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. (Para 9)

Surrender of income in this case is not voluntary. A survey was conducted more than ten months before the assessee filed its return of income. Had it been the intention of the assessee to make a full and true disclosure of its income, it would have filed a return declaring an income inclusive of the amount which was surrendered later during the course of assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in its books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961. (Paras 9 to 13)

Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369

CIT v. Atul Mohan Bindal, (2009) 9 SCC 589, *relied on.*

CIT v. MAK Data Ltd., ITA No. 415 of 2012, decided on 22-1-2013 (Del), *affirmed.*

Appeal dismissed SB-D/52510/C

Advocates who appeared in this case:

For the appellant - S. Krishan and Ms Rani Chhabra, Advocates

For the respondent - V. Shekhar, Senior Advocate (Ms Purnima Bhat, Ms Reshmi Malhotra, Piyush Jain, Vishal Saxena, Ms Ashly Cherian, Ms S. Rama and Ms Anil Katiyar, Advocates)

A **Chronological list of cases cited on page(s)**

CIT v. MAK Data Ltd., ITA No. 415 of 2012, decided on 22-1-2013 (Del)

CIT v. Atul Mohan Bindal, (2009) 9 SCC 589

Union of India v. Dharamendra Textile Processors (Radhakrishnan, J.), (2008) 13 SCC 369

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JUDGMENT

KSP Radhakrishnan J:

C **[1]** Leave granted. The appellant assessee filed his return of income for Assessment Year 2004-2005 on 27-10-2004, declaring an income of Rs 16,17,040 along with tax audit report. The case was selected for scrutiny and notices were issued under Sections 143(2) and 142(1) of the Income Tax Act. During the course of
D the assessment proceedings, it was noticed by the assessing officer (AO) that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of income tax returns and assessment orders and blank share transfer deeds duly signed had been impounded.
E These documents had been found in the course of survey proceedings under Section 133-A conducted on 16-12-2003 in the case of M/s Marketing Services (a sister concern of the assessee). The AO then proceeded to seek information from the assessee and issued a show-cause notice dated 26-10-2006. By the show-
F cause notice, the AO sought specific information regarding the documents pertaining to share applications found in the course of survey, particularly, bank transfer deeds signed by persons, who had applied for the shares.

G **[2]** Reply to the show-cause notice was filed on 22-11-2006, in which the assessee made an offer to surrender a sum of Rs 40.74 lakhs with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. Following are the words used by the assessee:

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> The offer of surrender is by way of voluntary disclosure of without admitting any concealment whatsoever or with any intention to conceal and subject to non-initiation of penalty proceedings and prosecution.

I **[3]** The AO after verifying the details and calculations of the share application money accepted by the Company completed the assessment on 29-12-2006 and a sum of Rs 40,74,000 was brought to tax, as "income from other sources" and the total income was assessed at Rs 57,56,700.

[4] The Department initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under Section 271(1)(c) of the Income Tax Act. During the course of the hearing, the assessee contended that penalty proceedings are not maintainable on the ground that the AO had not recorded his satisfaction to the effect that there has been concealment of income/furnishing of inaccurate particulars of income by the assessee and that the surrender of income was a conditional surrender before any investigation in the matter. The AO did not accept those contentions and imposed a penalty of Rs 14,61,547 under Section 271(1)(c) of the Act. The assessee challenged that order before the Commissioner of Income Tax (Appeals) by filing Appeal No. 2 of 2007-2008, which was dismissed *vide* order dated 17-2-2010.

[5] The assessee filed an appeal being ITA No. 1896/Del/10 before the Income Tax Appellate Tribunal, Delhi. The Tribunal recorded the following findings:

> The assessee's letter dated 22-11-2006 clearly mentions that the offer of the surrender is without admitting any concealment whatsoever or any intention to conceal.

The Tribunal took the view that the amount of Rs 40,74,000 was surrendered to settle the dispute with the Department and since the assessee, for one reason or the other, agreed or surrendered certain amounts for assessment, the imposition of penalty solely on the basis of assessee's surrender could not be sustained. The Tribunal, therefore, allowed the appeal and set aside the penalty order.

[6] The Revenue took up the matter in appeal before the High Court by filing ITA No. 415 of 2012. The High Court accepted[1] the plea of the Revenue that there was absolutely no explanation by the assessee for the concealed income of Rs 40,74,000. The High Court took the view that in the absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 is attracted. Holding so, the judgment of the Tribunal was set aside and the appeal filed by the Revenue was allowed[1].

1. *CIT v. MAK Data Ltd.*, ITA No. 415 of 2012, decided on 22-1-2013 (Del)

[7] We have heard the counsel on either side.

[8] We fully concur with the view of the High Court that the Tribunal has not properly understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Act, which reads as follows:

> Explanation 1. Where in respect of any facts material to the computation of the total income of any person under this Act:
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> (A) such person fails to offer an explanation or offers an explanation which is found by the assessing officer or the Commissioner (Appeals) or the Commissioner to be false, or
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> (B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,
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> then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed:

[9] The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. The Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the Explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

[10] The assessee has only stated that he had surrendered the additional sum of Rs 40,74,000 with a view to avoid litigation, buy peace and to channelise the energy and resources towards productive work and to make amicable settlement with the Income Tax Department. The statute does not recognise those types of defences under Explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the

appellant assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

[11] We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. The AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of income tax returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133-A conducted on 16-12-2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

[12] The AO has to satisfy itself whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(1)(c) has also been elaborately discussed by this Court in *Union of India v. Dharamendra Textile Processors*[2] and *CIT v. Atul Mohan Bindal*[3].

2. (2008) 13 SCC 369
3. (2009) 9 SCC 589

A **[13]** The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the Department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed. There shall be no order as to
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